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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 LORETTA DOWNS and D'ANDRE PARKER,
20 individually and on behalf of all others similarly
situated,

21 Plaintiffs,

22 vs.

23 U.S. FOODSERVICE, INC.,

24 Defendant.
25
26
27
28

Case No.: 10-2163 EMC

**~~PROPOSED~~ AMENDED ORDER
GRANTING FINAL APPROVAL TO CLASS
ACTION SETTLEMENT** (modified)

Date: August 31, 2012
Time: 1:30 p.m.
Crtrm: 5
Hon. Edward M. Chen

1 The Court, having considered whether to order final approval of the settlement of the above-
2 captioned action pursuant to the Amended Stipulation for Class Action Settlement and Release
3 ("Settlement Agreement") filed on February 17, 2012; having read and considered all of the papers of
4 the parties and their counsel, including Plaintiffs' Motion for Final Approval and supporting pleadings
5 filed on August 10, 2012 and Plaintiffs' Motion for Attorneys' Fees, Costs, and Incentive Awards and
6 supporting pleadings filed on June 12, 2012; having granted preliminary approval on April 10, 2012;
7 having previously directed that notice be given to all Class Members of preliminary approval of the
8 Settlement Agreement and the final approval hearing and the right to be excluded from or object to the
9 settlement, and having received no objections or opposition to the settlement; and good cause
10 appearing, pursuant to Rule 23(e)(1)(A) of the Federal Rules of Civil Procedure,

11 **FOR THE REASONS STATED ON THE RECORD, IT IS HEREBY ORDERED AS**
12 **FOLLOWS:**

13 1. Terms used in this Order, other than those defined in this Order, have the meaning
14 assigned to them in the Settlement Agreement and the Notice sent to Class Members.

15 2. The Court hereby makes final the conditional class certification contained in the Order
16 Granting Preliminary Approval of Class Action Settlement Agreement entered April 10, 2012
17 ("Preliminary Approval Order"), and thus makes final for purposes of the Settlement Agreement the
18 certification, pursuant to FRCP 23(g)(1)(A), of a class whose members consist of:

19 All current and former truck drivers employed by USF whose regular job
20 responsibilities include(d) driving trucks on routes within California during the Class
21 Period at any time during the period from April 9, 2006 to the date of preliminary
22 approval (Class Members). This includes drivers based in Reno, Nevada and Phoenix,
Arizona who drive routes in California.

23 3. The Court hereby finds that the Notice of Class Action Settlement and Fairness
24 Hearing, as mailed to all Class Members as previously ordered by the Court, fairly and adequately
25 described the terms of the proposed Settlement Agreement, the manner in which Class Members could
26 object to or participate in the settlement, and the manner in which Class Members could opt out of the
27 Class; was the best notice practicable under the circumstances; was valid, due and sufficient notice to
28 all Class Members; and complied fully with FRCP Rule 23(e)(1)(B), due process, and all other

1 applicable laws. The court further finds that a full and fair opportunity has been afforded to Class
2 Members to participate in the proceedings convened to determine whether the proposed Settlement
3 Agreement should be given final approval. The Court has also been advised that Defendant has given
4 all of the notices required by the Class Action Fairness Act, 28 U.S.C. §1715. Accordingly, the Court
5 hereby determines that all Class Members , who did not file a timely and proper request to be excluded
6 from the settlement are bound by this final Order and shall be deemed to have released any Released
7 Claims as defined in the Settlement Agreement.¹

8 4. The Court finds that the Settlement Agreement is fair, reasonable, and adequate as to
9 the Class, Plaintiffs and Defendant, and is the product of good faith, arm's-length negotiations between
10 the parties, and further, that the Settlement Agreement is consistent with public policy, and fully
11 complies with all applicable provisions of law. Accordingly, the Court hereby finally and
12 unconditionally approves the Settlement Agreement pursuant to FRCP 23(e)(1), and specifically:

- 13 a. Approves the Gross Settlement Amount of Three Million Dollars (\$3,000,000);
14 b. Approves the distribution of the Net Settlement Amount to members of the
15 Class in the manner specified in the Settlement Agreement;
16 c. Approves that \$50,000 of the Settlement Fund be set aside as a Reserve Fund to
17 address any legitimate disputes about the proper amount of payments to Class Members who were not
18 initially located or who do not receive and/or cash their settlement checks, and that any amounts
19 remaining in the Reserve Fund, together with the amounts of any uncashed checks, after the expiration
20 date of checks mailed to Class Members, will be distributed to California Emergency Foodlink or
21 another qualified 501(c)(3) charity (*cy pres* recipient(s)) designated by Defendant, subject to approval
22 by the Court pending receipt of a supplemental declaration by counsel;
23 d. Approves that \$10,000 of the Settlement Fund be designated to resolve PAGA
24 claims, and that under Labor Code section 2699(i), 75 percent, or \$7,500 of that amount will be paid to
25 the California Labor and Workforce Development Agency;
26

27 ¹ The only class member who has requested exclusion from the settlement, and who is hereby
28 excluded, is Eduardo Enriquez.

e. Approves the application for Enhancement Awards of \$10,000 each to Plaintiffs/Class Representatives Loretta Downs, D'Andre Parker, and Kirk Ramirez, and of \$2,500 each to Plaintiffs/Class Representatives Raul Roman and Jason Wolterding;

f. Approves Class Counsels' requested fees award of \$900,000 (thirty percent (30%) of the Gross Settlement Amount);

g. Approves Class Counsels' request for reimbursement of litigation expenses of \$15,000;

h. Approves payment to Rust Consulting, Inc., the Settlement Administrator, of \$28,100; and

i. Approves and orders that in all other particulars the Settlement Agreement be carried out by the Parties and the Settlement Administrator.

5. The Court orders that, following the Effective Date as defined in the Settlement Agreement and the Preliminary Approval Order, the Parties and the Settlement Administrator shall carry out the following implementation schedule for further actions and proceedings:

Within 30 days after the Effective Date	Defendant to transfer Gross Settlement Amount to the Settlement Administrator
Within 10 days after the Defendant's payment following the Effective Date:	Settlement Administrator to pay from the Gross Settlement Amount: 1) Attorneys' fees as specified above to Class Counsel; 2) Litigation expenses as specified above to Class Counsel; 3) Enhancement Awards as specified above to the Plaintiffs/Class representatives; and 4) Settlement Administration costs of \$28,100 to Rust Consulting, Inc.
Within 45 days after the Effective Date	The Settlement Administrator shall distribute Individual Settlement Payments to all participating Settlement Class Members, by checks sent via first class US mail, and \$7,500 to the Labor Workforce Development Agency.
After the date on which Individual Settlement Payment checks expire and can no longer be cashed	The Settlement Administrator shall distribute any remaining funds from the Gross Settlement

[PROPOSED] AMENDED ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT - CASE NO. 10-2163

EMC

1 cashed, and as soon as the Settlement
2 Administrator can determine the amount
3 remaining in the Reserve Fund and the amount of
4 uncashed Individual Settlement Payment checks

Amount to the designated *cy pres* recipient subject
to approval by the Court.

5 6. This action is hereby dismissed with prejudice; provided, however, that without
6 affecting the finality of this Order, the Court retains exclusive and continuing jurisdiction over the case
7 for purposes of supervising, implementing, interpreting and enforcing this Order and the Settlement
8 Agreement, as may become necessary, until all of the terms of the Settlement Agreement have been
9 fully carried out. Plaintiffs' counsel shall notify the Court when this has occurred.

10 Dated: 9/4/12

